

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
YUSEF GREEN,

Plaintiff,

- against -

LATROVIOTA WELLS, et al.,Defendants.  
-----X

HONORABLE PAUL A. CROTTY, United States District Judge:

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ELECTRONICALLY FILED  
DOC #:  
DATE FILED: March 23, 2011

09 Civ. 2636 (PAC) (KNF)

ORDER on R&R

Yusef Green ('Green') brings this action, pro se, against New York City police officers Gonzalez ('Gonzalez') and Latroviota Wells ('Wells'; collectively, 'Defendants') under 42 U.S.C. § 1983. Green seeks monetary relief for the alleged false arrest and illegal search and seizure that led to his current incarceration. Wells<sup>1</sup> moves to dismiss Green's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

**BACKGROUND**

The Court assumes the parties' familiarity with the facts, as described in the R&R. Because this is a motion to dismiss, the well-pleaded factual allegations in the Amended Complaint are assumed to be true. See Warney v. Monroe Cnty., 587 F.3d 113, 116 (2d Cir. 2009). Briefly, on March 16, 2007, Defendants stopped Green's vehicle because it was stopped at a traffic light for too long. Green was unable to provide his registration case because he had purchased his vehicle outside New York State, and asked Gonzalez to run his information. Gonzalez did not do so, but instead searched Green's vehicle and found \$36,000 and 208 OxyContin tablets. Defendants arrested Green for, inter alia, criminal possession of a controlled

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<sup>1</sup> Green was unable to serve defendant Gonzalez with the summons and copy of the amended complaint. Despite a number of extensions, Gonzalez has yet to be served, and the time for effecting service of process has expired. On January 19, 2011, Green moved for another extension of time to serve Gonzalez. The Court has not ruled with this motion.

substance. Green was indicted in Bronx County Supreme Court and ultimately pleaded guilty in the Southern District of New York to distributing OxyContin and attempting to distribute Dilaudid.

On November 3, 2009, the Court referred general pretrial and dispositive motions in the case to United States Magistrate Judge Kevin N. Fox. Magistrate Judge Fox issued a Report and Recommendation ('R&R') on November 22, 2010, recommending that the Court grant Wells' motion as to the false arrest claim and deny it as to the unlawful search and seizure claim. The Magistrate Judge provided fourteen days for written objections, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. At Green's request, the court extended the deadline for objections until January 31, 2011. No objections have been filed.

### **DISCUSSION**

"To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citation and quotation marks omitted). The Court finds no clear error on the face of this record and adopts the R&R as its opinion. The Court holds that: (1) Green's false arrest claim is barred as a matter of law by his guilty plea, see Roundtree v. City of New York, 778 F. Supp. 614, 619 (E.D.N.Y. 1991), and is therefore dismissed; and (2) Wells' motion to dismiss the claim of unlawful search and seizure is denied because the Complaint can be construed as requesting damages for the related invasion of privacy. See Townes v. City of New York, 176 F.3d 138, 145 (2d Cir. 1999).

### **CONCLUSION**

Wells' motion to dismiss is granted in part and denied in part. The Order of Reference to Magistrate Judge Fox continues for further disposition of this matter, including the January 19,

2011 Motion for Extension of Time to serve Gonzalez. The Clerk of Court is directed to terminate the motion at Docket # 17.

Dated: New York, New York  
March 23, 2011

SO ORDERED

  
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PAUL A. CROTTY  
United States District Judge

Copies Mailed To:

Yusef Green  
Reg # 22881-050  
MDC-Brooklyn  
P.O. Box 329002  
Brooklyn, NY 11232

Lisa M. Richardson  
NYC Law Department, Office of the Corporation Counsel  
100 Church Street  
New York, NY 10007